

16.04.2024

Sl. No.: 39

Court No.30
BM

CRR 2063 of 2022

Pushpal Singha Roy

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Uday Sankar Chattopadhyay,
Ms. Aishwarya Datta.

For the State : Mr. Rudradipta Nandy,
Ms. Sanjana Saha.

For the Opposite Party No. 2 : None.

1. The present revisional application has been preferred praying for quashing of the First Information Report and proceedings in Ekbalpur Police Station Case No.123 of 2022 dated April 5, 2022(G.R No.935 of 2022) under Sections 153/504/500/120B of the Indian Penal Code, pending before the learned Chief Judicial Magistrate, Alipore, South 24 Parganas.
2. The petitioner on affidavit has filed the translation of the content of the said materials in dispute in the present case.
3. It is the case of the petitioner that he is **a Youtuber** by profession and has more than one lakh subscribers.
4. The present case has been initiated on the basis of Youtube content which was put up (uploaded) by the petitioner.
5. **The following judgments have been relied upon on behalf of the petitioner:-**

i. Kedar Nath Singh vs State of Bihar, AIR 1962 SC

955.

ii. *Vinod Dua vs Union of India & Ors.*, AIR 2021 SC
(Criminal) 1355.

6. It appears that the facts and circumstances in the cases referred to are not similar to the facts and circumstance in this case.
7. On perusal of the said **transcription on affidavit** and considering the statement as made on the said Blog, this court finds that, a prima facie case as alleged has been made out against the petitioner.
8. In ***Anuradha Bhasin vs Union of India & Ors.*, in WP (Civil) No. 1031 of 2019 and Ghulam Nabi Azad vs Union of India and Anr., in WP (Civil) No. 1164 of 2019, decided on January 10, 2020**, the Supreme Court held:-

“152. *In this view, we issue the following directions:-*

a.

b. *We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). **The restriction upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.***”

9. **Article 19(2) of the Constitution, is as follows:-**

“19. Protection of certain rights regarding freedom of speech, etc.-

(1)

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes

*reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, **public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.***

10. Considering the nature of the material of the Blog, the ingredients required to prima facie constitute the offences alleged is found on record and as such the case should be permitted to proceed to trial and interference at this stage would amount to abuse of the process of law.
11. **CRR 2063 of 2022 is dismissed.**
12. All applications connected thereto stands disposed of.
13. Interim order, if any, stands vacated.
14. Let a copy of the order be sent to the learned trial court for compliance.
15. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)